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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,375	11/29/2001	Ze'ev Ganor	013/02472	1331
44909	7590	03/11/2005	EXAMINER	
FENSTER & COMPANY INTELLECTUAL PROPERTY 2002 LTD. C/O REED SMITH LLP 599 LEXINGTON AVENUE, 29TH FLOOR NEW YORK, NY 10022-7650			BUDD, MARK OSBORNE	
			ART UNIT	PAPER NUMBER
			2834	

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/980,375

Applicant(s)

GANOR ET AL.

Examiner

Mark Budd

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,10-31 and 43-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,10-31 AND 43-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-4, 6, 7, 10-31 and 43-57 are rejected under 35 USC 103 as unpatentable over Zumeris (140) in view of lino for the specific reasons set forth in the previous office action (7-15-04).

In response to applicants arguments it is noted that the claim language "wherein at least some of the electrodes are electrifiable to excite ---"and "the at least one power supply controls electrification to independently control --- vibrations so as to selectively generate different forms of vibration motion ---"are merely statements of desired function with no particular structure to support said function (i.e. not stated s a means plus function). Thus, such recitations are not given patentable weight. Courts have found that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "Apparatus claims cover what a device is not what a device does". Hewlett-Packard Co. v. Bausch & Lomb Inc., 909F.2d 1464, 1469, 15 USPQ 2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original). However, even assuming, arguendo, that these phrases were deemed as limiting, they are clearly taught by Zumeris (140). The electrodes of Zumeris are both "electrifiable" and electrified to produce both longitudinal (x) and transverse (4) vibrations. In fact, each electrode can be separately, independently controlled (col. 8, lines 17-21 and 30-37) (col. 7, lines 17-21). Note, too, col. 5, line 662-col. 6, line 15 which teaches changing the phase of the X-mode while holding the y mode the same to reverse direction. To achieve this, the output motion is reversed, thus the relationship of x and y modes is independently changed.

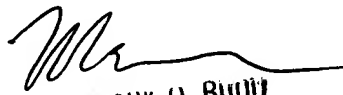
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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Budd/ds

03/03/05


MARK O. BUDD
PRIMARY EXAMINER
ART UNIT 2834